

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1180

Introduced by Senator Hancock

February 22, 2012

An act to amend ~~Section~~ *Sections 1270, 1275, and 1318.1* of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 1180, as amended, Hancock. Criminal procedure: release on defendant's own recognizance.

(1) Existing law provides that a defendant who is in custody and arraigned for a misdemeanor offense, or who has been arrested upon an out-of-county warrant arising from a case involving only misdemeanors, is entitled to be released on his or her own recognizance unless the court finds that the release will compromise public safety or will not reasonably assure the appearance of the defendant, in which case the court is required to set bail and specify conditions, if any, for release.

This bill would instead specify that, any case that is before a court upon an accusatory pleading concerning the commission of either a misdemeanor or a felony punishable by imprisonment in a county jail, the defendant is entitled to be released on his or her own recognizance, unless the court finds the release will compromise public safety or will not reasonably assure the appearance of the defendant. If the court makes one of those findings, the bill would require the court to specify the least restrictive conditions under which release of the defendant will not compromise public safety and will reasonably assure his or her appearance, and would require the court to release the defendant on his or her own recognizance subject to those conditions. The bill

would set forth certain conditions that the court may specify, including, but not limited to, prohibiting contact with alleged victims or potential witnesses, or home detention, with or without electronic monitoring. The bill would specify that, if release will compromise public safety or will not reasonably assure the appearance of the defendant, then the court would be required to state the reasons for the finding and set bail, as specified.

(2) Existing law requires a judge or magistrate, in setting, reducing, or denying bail, to take into consideration the protection of the public, the seriousness of the offense, the defendant's previous criminal record, and the probability of the defendant appearing at trial or hearing.

This bill would revise the factors that the judge or magistrate would be required to consider to, among other things, require the judge or magistrate to consider the history and characteristics of the defendant, and to consider the nature and circumstances of the offense, rather than the seriousness of the offense. The bill would require a judge or magistrate to also consider those factors when determining conditions for pretrial release.

Existing

(3) Existing law authorizes a court, with the concurrence of the county board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance. In cases involving certain crimes, including violent felonies, an investigative report is required to be prepared that includes specified information, including outstanding warrants against the defendant and prior incidents where the defendant has failed to make a court appearance.

This bill would also authorize a ~~law enforcement agency~~ sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance in accordance with those provisions. ~~those purposes, and would require a pretrial investigative report to be prepared before a court may order a defendant released on his or her own recognizance in any case involving specified crimes, including a violent felony. The bill would authorize the preparation of a pretrial investigation report in all other cases in which a court, sheriff, county probation department, or other local governmental agency has employed an investigative staff to recommend whether the defendant should be released on his or her own recognizance. The bill would~~

require any pretrial investigative report to include the results of an evidence-based pretrial risk assessment, as defined, evaluating the defendant's probability of appearing at trial and potential risk to public safety. The bill would prohibit, for purposes of preparing the report, a defendant from being interviewed about the facts and circumstances of the defendant's current offense, and would limit the use and availability of the information in the report. The bill would authorize a court, sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ supervision staff to monitor a defendant's compliance with release conditions ordered by the court, as specified.

(4) Existing constitutional provisions require that a statute that limits the right of access to meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by that limitation and the need for protecting that interest.

This bill would make legislative findings and declarations relating to, among other things, the necessity of treating pretrial investigation reports as confidential in order for pretrial programs to function properly.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*
3 *(a) Pretrial custody reform is urgently needed in California,*
4 *where the pretrial population far exceeds the national average of*
5 *61 percent. More than 71 percent of the 71,000 Californians held*
6 *in county jails statewide on any given day have not been convicted*
7 *of a crime but rather are awaiting trial.*
8 *(b) Pretrial custody reform will support the implementation of*
9 *public safety realignment by providing counties greater flexibility*
10 *in managing their pretrial populations using best practices*
11 *developed over many years across many jurisdictions.*
12 *(c) Pretrial services programs have been successfully*
13 *implemented in many jurisdictions, and have helped to reduce the*
14 *pretrial jail populations, save money, reduce recidivism, and*
15 *protect the public.*

1 (d) *Increasing the use of evidence-based practices in pretrial*
2 *population management programs will allow better empirical*
3 *analysis in pretrial decisions, and will help to ensure that the*
4 *court's decision to order release, conditions of release, and bail*
5 *is based on a credible assessment of the defendant's risk to public*
6 *safety and the likelihood of appearance as required.*

7 (e) *In order for pretrial programs to function properly and to*
8 *protect the rights of persons submitting sensitive information, it*
9 *is essential to treat pretrial investigation reports as confidential*
10 *so the reports are used only for release, bail, and monitoring*
11 *considerations.*

12 SEC. 2. *Section 1270 of the Penal Code is amended to read:*

13 1270. (a) Any person who has been arrested for, or charged
14 with, an offense other than a capital offense may be released on
15 his or her own recognizance by a ~~court~~ judge or magistrate who
16 could release a defendant from custody upon the defendant giving
17 bail, including a defendant arrested upon an out-of-county warrant.
18 A defendant who is in custody and is arraigned on a complaint
19 alleging an offense ~~which~~ *that is a misdemeanor or a felony*
20 *punishable by imprisonment in a county jail pursuant to subdivision*
21 *(h) of Section 1170, and a defendant who appears before a ~~court~~*
22 *judge or magistrate upon an out-of-county warrant arising out of*
23 *a case involving only misdemeanors or felonies punishable by*
24 *imprisonment in a county jail pursuant to subdivision (h) of Section*
25 *1170, shall be entitled to an own recognizance release unless the*
26 *court makes a finding on the record, in accordance with Section*
27 *1275, that an own recognizance release will compromise public*
28 *safety or will not reasonably assure the appearance of the defendant*
29 *as required. Public safety shall be the primary consideration. If the*
30 *court makes one of those findings, the court shall ~~then set bail and~~*
31 *~~specify the conditions, if any, whereunder the defendant shall be~~*
32 *~~released.~~ specify the least restrictive conditions under which release*
33 *of the defendant on his or her own recognizance will not*
34 *compromise public safety and will reasonably assure his or her*
35 *appearance. Upon specifying those conditions, the court shall*
36 *order the defendant to be released on his or her own recognizance.*
37 *Those conditions may include, but are not limited to, any of the*
38 *following:*

1 (1) *Mandatory reporting to the court, a designated law*
2 *enforcement agency, county probation department, or other local*
3 *governmental agency.*

4 (2) *Prohibiting contact with alleged victims or potential*
5 *witnesses who may testify concerning the offense.*

6 (3) *Restricting locations, place of abode, and travel.*

7 (4) *Specifying curfew.*

8 (5) *Restricting consumption of alcohol.*

9 (6) *Refraining from any illegal use of controlled substances, as*
10 *defined in Division 10 (commencing with Section 11000) of the*
11 *Health and Safety Code.*

12 (7) *Home detention, with or without electronic monitoring.*

13 (b) *This section shall apply whenever a case is before any court*
14 *upon an accusatory pleading concerning the commission of a*
15 *misdemeanor or a felony punishable by imprisonment in a county*
16 *jail pursuant to subdivision (h) of Section 1170.*

17 (c) *If the judge or magistrate makes a finding that release*
18 *pursuant to subdivision (a) will compromise public safety or will*
19 *not reasonably assure the appearance of the defendant as required,*
20 *the court shall state on the record the reasons for that finding and*
21 *shall then set bail as is reasonably necessary to assure the*
22 *appearance of the defendant.*

23 ~~(b)~~

24 (d) *Article 9 (commencing with Section 1318) shall apply to*
25 *any person who is released pursuant to this section.*

26 SEC. 3. *Section 1275 of the Penal Code is amended to read:*

27 1275. (a) *In determining conditions for pretrial release, and*
28 *in setting, reducing, or denying bail, the judge or magistrate shall,*
29 *on the available information, take into consideration the protection*
30 *of the public, the seriousness nature and circumstances of the*
31 *offense charged, the history and characteristics of the defendant,*
32 *the previous criminal record of the defendant, including whether*
33 *the defendant was, at the time of arrest for the charged offense,*
34 *on probation, parole, or other form of release pending trial,*
35 *sentencing, or appeal, and the probability of his or her appearing*
36 *at trial or hearing of the case, including the defendant's record of*
37 *appearance at past court hearings or of flight to avoid arrest or*
38 *prosecution.* ~~The public~~ *Public safety shall be the primary*
39 *consideration.*

1 **(b)** *In considering the history and characteristics of the*
2 *defendant, the judge or magistrate may consider any of the*
3 *following:*

4 **(1)** *The ties of the defendant to the community, including his or*
5 *her employment, the duration of his or her residence, and the*
6 *defendant's family attachments.*

7 **(2)** *The defendant's current educational or vocational program*
8 *enrollment and participation.*

9 **(3)** *The physical and mental condition of the defendant, and the*
10 *defendant's history related to dependence on alcohol or controlled*
11 *substances, including past and current participation in substance*
12 *abuse programs and counseling.*

13 ~~**(c)**~~
14 **(c)** *In considering the ~~seriousness~~ nature and circumstances of*
15 *the offense charged, the judge or magistrate shall include*
16 *consideration of the alleged injury to the victim, and alleged threats*
17 *to the victim or a witness to the crime charged, and the alleged*
18 *use of a firearm or other deadly weapon in the commission of the*
19 *crime charged, ~~and the alleged use or possession of controlled~~*
20 *~~substances by the defendant.~~*

21 ~~**(b)**~~
22 **(d)** *In considering offenses wherein a violation of Chapter 6*
23 *(commencing with Section 11350) of Division 10 of the Health*
24 *and Safety Code is alleged, the judge or magistrate shall consider*
25 *both of the following: ~~(1) the alleged amounts~~*

26 **(1)** *Whether large quantities of controlled substances were*
27 *allegedly involved in the commission of the offense, ~~and (2)~~*
28 *~~whether.~~*

29 **(2)** *Whether the defendant is currently released on bail for an*
30 *alleged violation of Chapter 6 (commencing with Section 11350)*
31 *of Division 10 of the Health and Safety Code.*

32 ~~**(e)**~~
33 **(e)** *Before a court reduces bail below the amount established*
34 *by the bail schedule approved for the county, in accordance with*
35 *subdivisions (b) and (c) of Section 1269b, for a person charged*
36 *with a serious felony, as defined in subdivision (c) of Section*
37 *1192.7, or a violent felony, as defined in subdivision (c) of Section*
38 *667.5, the court shall make a finding of unusual circumstances and*
39 *shall set forth those facts on the record. For purposes of this*
40 *subdivision, "unusual circumstances" ~~does not include~~ shall not*

1 *solely be based on the fact that the defendant has made all prior*
2 *court appearances or has not committed any new offenses.*

3 **SECTION 1.**

4 *SEC. 4.* Section 1318.1 of the Penal Code is amended to read:

5 1318.1. (a) A court, ~~law enforcement agency, probation~~
6 ~~department~~ *sheriff, county probation department, or other local*
7 *governmental agency, with the concurrence of the board of*
8 *supervisors, may employ an investigative staff for the purpose of*
9 *recommending whether a defendant should be released on his or*
10 *her own recognizance.*

11 (b) Whenever a court, ~~law enforcement agency, probation~~
12 ~~department~~ *sheriff, county probation department, or other local*
13 *governmental agency has employed an investigative staff pursuant*
14 *to subdivision (a), an investigative report shall be prepared in all*
15 *cases before a court may order a defendant released on his or her*
16 *own recognizance in any case involving a violent felony, as*
17 *described in subdivision (c) of Section 667.5, or a felony in*
18 *violation of subdivision (a) of Section 23153 of the Vehicle Code,*
19 *a pretrial investigation report shall be prepared recommending*
20 *whether the defendant should be released on his or her own*
21 *recognizance. The report shall include all of the following:*

22 (1) Written verification of any outstanding warrants against the
23 defendant.

24 (2) Written verification of any prior incidents where the
25 defendant has failed to make a court appearance.

26 (3) Written verification of the criminal record of the defendant.

27 (4) Written verification of the residence of the defendant during
28 the past year.

29 After the report is certified pursuant to this subdivision, it shall
30 be submitted to the court for review, prior to a hearing held
31 pursuant to Section 1319.

32 (c) *Whenever a court, sheriff, county probation department, or*
33 *other local governmental agency has employed an investigative*
34 *staff pursuant to subdivision (a), a pretrial investigation report*
35 *may be prepared in any case not involving a violent felony, as*
36 *described in subdivision (c) of Section 667.5, or a felony in*
37 *violation of subdivision (a) of Section 23153 of the Vehicle Code,*
38 *recommending whether the defendant should be released on his*
39 *or her own recognizance.*

1 (d) Any report prepared pursuant to subdivision (b) or (c) shall
2 include all of the results of an evidence-based pretrial risk
3 assessment evaluating the defendant's probability of appearing
4 at trial and potential risk to public safety. "Evidence-based pretrial
5 risk assessment" is the objective, standardized analysis of
6 information about a pretrial defendant in a way that is consistent
7 with and guided by the best available scientific evidence and
8 professional knowledge that measures the risk of the defendant's
9 probability of appearing at trial and the potential risk to public
10 safety while pending case disposition.

11 (e) In preparing the report pursuant to subdivision (b) or (c),
12 the defendant shall not be interviewed about the facts and
13 circumstances of the current offense, and any information that a
14 defendant may provide shall not be included in the report. Any
15 information provided by the defendant shall be used solely for the
16 purposes of determining whether the defendant should be released
17 on his or her own recognizance or in setting the conditions of the
18 defendant's release or modifying a prior release order. The reports
19 may be filed as part of the case record. The reports are confidential
20 and shall be sealed upon receipt by the court and made available
21 only by court order, except that the reports shall be made available
22 upon request to any of the following:

23 (1) Any local or state criminal justice agency.

24 (2) Any agency to which the defendant is referred for assessment
25 or treatment.

26 (3) Counsel for the defendant who is the subject of the report.

27 (f) A court, sheriff, county probation department, or other local
28 governmental agency may, with the concurrence of the board of
29 supervisors, employ supervision staff to monitor the defendant's
30 compliance with the release conditions ordered by the court.
31 Supervision staff may do any of the following:

32 (1) Notify the defendant of court appearance obligations.

33 (2) Require the defendant to report periodically by mail,
34 telephone, or personal appearance to verify compliance with
35 release conditions.

36 (3) Monitor and assist the defendant with complying with release
37 conditions.

38 (4) Supervise a defendant placed on home detention, with or
39 without electronic monitoring, as a condition of release.

40 (5) Promptly report violations of release conditions to the court.

1 (6) *Provide information to assist any law enforcement officer*
2 *with detaining a defendant supervised pursuant to this section and*
3 *for whom a bench warrant has been issued.*

4 ~~(e)~~

5 (g) The salaries of the staff are a proper charge against the
6 county.

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